

**Minutes of Meeting  
BOARD FOR CONTRACTORS  
INFORMAL FACT-FINDING CONFERENCES  
May 3, 2005**

The Board for Contractors convened in Richmond, Virginia, for the purpose of holding Informal Fact-Finding Conferences pursuant to the Administrative Process Act.

Wyatt Walton, Board member, presided. No other Board members were present.

Jennifer Kazzie appeared for the Department of Professional and Occupational Regulation.

The conferences were recorded by Inge Snead & Associates, LTD. and the Summaries or Consent Orders are attached unless no decision was made.

Disc = Disciplinary Case  
Lic = Licensing Application  
RF = Recovery Fund Claim  
Trades = Tradesmen Application

C = Complainant/Claimant  
A = Applicant  
R = Respondent/Regulant  
W = Witness  
Atty = Attorney

Participants

1. Michael E. Lincoln  
t/a Bay Front Construction  
File Number 2005-01217 (Disc)

Lincoln – R  
Mark Shook – C  
Heather Shook – C  
Charles Pollock – W  
Richard Osborn – W  
Stephen Lynch – W

2. B. L. Hall  
t/a B. L. Hall Custom Builders  
File Number 2004-04314 (Disc)

Bryan Hall – R  
Phillip Delvecchio – C

3. American Painting Inc.  
File Number 2004-04832 (Disc)

George Pappadakis – R  
Justo Perez – C

4. Turcotte Project Management Services LLC  
File Number 2005-00296 (Disc)

Joyce Kenney – C

5. Tamara and James Maddox,  
t/a Mountain View Construction  
File Number 2005-00155 (Disc)

Tamara Maddox – R  
James Maddox – R  
Irma Peil – C  
Patricia Struther – W

No Decision Made

6. Timothy D. Berry Jr.  
t/a Insideout Construction  
File Number 2005-01765 (Disc)

Gabriele Johnson – C

The meeting adjourned at 3:35 p.m.

BOARD FOR CONTRACTORS

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Mark D. Kinser, Chairman

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Louise Fontaine Ware, Secretary

COPY TESTE:

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Custodian of Records

**IN THE  
COMMONWEALTH OF VIRGINIA  
BOARD FOR CONTRACTORS**

Re: Michael E. Lincoln, t/a Bay Front Construction

File Number: 2005-01217  
License Number: 2705029423

**SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE**

On March 29, 2005, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Michael E. Lincoln ("Lincoln"), t/a Bay Front Construction to the address of record. The Notice included the Report of Findings, which contained the facts regarding the regulatory and/or statutory issues in this matter. The certified mail was signed for and received.

On May 3, 2005, an Informal Fact-Finding Conference ("IFF") convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Michael Lincoln, Respondent; Mark and Heather Shook ("the Shooks"), Complainants; Charles Pollock, Richard Osborn, and Stephen Lynch, Witnesses; Jennifer Kazzie, Staff Member; and Wyatt Walton, Presiding Board Member.

**RECOMMENDATION**

Based upon the evidence and the IFF, the following is recommended regarding the Counts as outlined in the Report of Findings:

According to the Board's records, on February 4, 2005, Lincoln terminated his license.

Count 1: Board Regulation (Effective January 1, 2003)

During the IFF, Lincoln provided a copy of the February 12, 2004, contract signed by both parties. The Shooks agreed that they signed the February 12, 2004, contract. Therefore, I recommend Count 1 of this file be closed with a finding of no violation of 18 VAC 50-22-260.B.8.

Count 2: Board Regulation (Effective January 1, 2003)

Lincoln's contract, dated February 12, 2004, with the Shooks reflected the name Bay Front Construction Inc. However, Lincoln's Class A contractor's license was issued to Lincoln as a sole proprietorship, under the trade name Bay Front Construction.

During the IFF, Lincoln testified that the erroneous name listed on the contract was a typographical error. Lincoln also stated Bay Front Construction Company Inc. incorporated in 1998. Based on the record, Bay Front Construction Company Inc. obtained a Class A contractor's license as a corporation in December 2004.

During the IFF, Lincoln provided a revised copy of his contract; however, the name on the contract indicates the company name Bay Front Development, LLC.

Lincoln's failure to operate in the name in which the license was issued is a violation of Board Regulation 18 VAC 50-22-230.A. Therefore, I recommend a monetary penalty of \$250.00 and remedial education be imposed.

The Board's Basic Contracting License class (remedial education) must be successfully completed by a member of Responsible Management within six months of the effective date of the order.

Count 3: Board Regulation (Effective January 1, 2003)

The contract used in the transaction failed to contain three of the provisions required by the Board's regulation. During the IFF, Lincoln provided a revised copy of his contract.

Lincoln's failure to include subsections f., h. (contractor's name, license number, expiration date, class of license, and classifications or specialty services), and i. in the contract is a violation of Board Regulation 18 VAC 50-22-260.B.9. Therefore, I recommend a monetary penalty of \$250.00 and remedial education be imposed.

The Board's Basic Contracting License class (remedial education) must be successfully completed by a member of Responsible Management within six months of the effective date of the order.

Count 4: Board Regulation (Effective January 1, 2003)

In September 2004, the Shooks requested David W. Hutchenson ("Hutchenson") inspect the subject property. Hutchenson noted deficiencies found at the subject property. In December 2004, the City of Hampton conducted an on-site inspection of the subject property and discovered thirty-nine (39) building code violations. The Shooks testified that Lincoln made repeated promises to correct the building code violations; however, the building code violations were never corrected. The Shooks further testified that Lincoln abandoned the job in June 2004.

Lincoln provided documentation that he had done work properly, which was above and beyond his contract. Lincoln testified that the items cited for building code violations were predominately items that were not specified on the contract and he, therefore, is not responsible. Lincoln further testified that the majority of items contracted for were completed and passed inspection and that he is willing to return to the property to correct the building code violations. The Shooks, conversely, testified that Lincoln previously informed them that he would only return if paid an additional \$10,000.00.

The Shooks have paid an additional \$10,000.00 to correct some of the building code violations. The Shooks also testified that they have obtained estimates from other contractors to correct the building code violations, all of which exceed \$115,000.00.

This contract was for a complex and difficult project. There is a difference in opinion as to the scope of the work and who was responsible for various phases of the work. Shook has paid \$140,000.00 of the \$150,000.00 contract price to Lincoln. However, there are still numerous problems and building code violations remaining.

While the nature of this contract caused some of this ambiguity, the fact remains there are significant deficiencies remain in the work that he performed. It is my opinion that Lincoln clearly performed contracted work that did not pass the building code. Moreover, Lincoln has made minimal effort in trying to abate the building code violations.

Lincoln's action of improperly performing work constitutes negligence or incompetence in the practice of contracting, and is a violation of Board Regulation 18 VAC 50-22-260.B.5. Therefore, I recommend a monetary penalty of \$1,000.00 be imposed.

Count 5: Board Regulation (Effective January 1, 2003)

In October 2004, the Board's agent requested Lincoln provide the Board with the following information: the names, addresses, and telephone numbers of all subcontractors who performed work at the subject property; the specific work performed by each subcontractor; all subcontract agreements and/or invoices with a statement of what each subcontractor was paid in total for the project; copies of all checks paid to subcontractors, and each subcontractor's license number.

During the IFF, Lincoln testified he did forward documentation to the investigator and that he was not aware the investigator needed more information than what was originally provided. Lincoln provided the additional information and documentation , as outlined in the Report of Findings, during the IFF. Therefore, I recommend Count 5 of this file be closed with a finding of no violation of 18 VAC 50-22-260.B.12.

By: \_\_\_\_\_  
Wyatt Walton  
Presiding Board Member

Board for Contractors

Date: \_\_\_\_\_

### **MONETARY PENALTY TERMS**

*THE TOTAL MONETARY PENALTY RECOMMENDED HEREIN SHALL BE PAID WITHIN SIXTY (60) DAYS FROM THE DATE OF ENTRY OF THE FINAL ORDER IN THIS MATTER. FAILURE TO PAY THE TOTAL MONETARY PENALTY ASSESSED WITHIN SIXTY (60) DAYS OF THE DATE OF ENTRY OF SAID FINAL ORDER WILL RESULT IN THE AUTOMATIC SUSPENSION OF THE LICENSE, CERTIFICATE, OR REGISTRATION UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.*

VIRGINIA DEPARTMENT OF PROFESSIONAL  
AND OCCUPATIONAL REGULATION  
COMPLIANCE & INVESTIGATION DIVISION  
3600 WEST BROAD STREET  
RICHMOND, VA 23230-4917

REPORT OF FINDINGS

BOARD: Board For Contractors  
DATE: March 9, 2005 (revised March 24, 2005)  
  
FILE NUMBER: 2005-01217  
RESPONDENT: Michael E. Lincoln, t/a Bay Front Construction  
LICENSE NUMBER: 2705029423  
EXPIRATION: July 31, 2005  
  
SUBMITTED BY: Valerie J. Matney  
APPROVED BY: David C. Dorner

COMMENTS:

Bay Front Construction Company Inc. was issued Class A contractor's license number 2705091007 on December 30, 2004.

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Michael E. Lincoln ("Lincoln"), t/a Bay Front Construction, was at all times material to this matter a licensed Class A contractor in Virginia (No. 2705029423).

Based on the analysis and/or investigation of this matter, there is probable cause to believe the respondent has committed the following violation(s) of the Code of Virginia and/or Board's regulation(s):

BACKGROUND:

On September 17, 2004, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Mark Shook ("Shook") regarding Bayfront Construction Inc. (Exh. C-1)

On February 12, 2004, Bay Front Construction Inc. entered into a written contract, in the amount of \$150,460.00, with Mark and Heather Shook ("the Shooks") to perform renovations at 118 Lighthouse Drive, Hampton, Virginia 23664. The contract was signed by Michael E. Lincoln on behalf of Bay Front Construction Inc. (Exh. C-2)

On July 19, 1995, Lincoln was issued Class A contractor's license number 2705029423 as a sole proprietorship. Michael Lincoln, individual tracking number 2706072590, is the Designated Employee, Qualified Individual, and Responsible Management for license number 2705029423. (Exh. I-2)

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1. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

8. Failure of all those who engage in residential contracting, excluding subcontractors to the contracting parties and those who engage in routine maintenance or service contracts, to make use of a legible written contract clearly specifying the terms and conditions of the work to be performed. For the purposes of this chapter, residential contracting means construction, removal, repair, or improvements to single-family or multiple-family residential buildings, including accessory-use structures as defined in § 54.1-1100 of the Code of Virginia. Prior to commencement of work or acceptance of payments, the contract shall be signed by both the consumer and the licensee or his agent.

FACTS:

The contract was signed by Michael E. Lincoln but not the Shooks prior to commencement of work or acceptance of payments. (Exh. C-2)

2. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-230. Change of name or address.

- A. A licensee must operate under the name in which the license is issued. Any name change shall be reported in writing to the board within 30 days of the change. The board shall not be responsible for the licensee's failure to receive notices or correspondence due to the licensee's not having reported a change of name.

FACTS:

Lincoln failed to operate in the name in which the license was issued.



3. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

9. Failure of those engaged in residential contracting as defined in this chapter to comply with the terms of a written contract which contains the following minimum requirements:
  - f. Disclosure of the cancellation rights of the parties;
  - h. Contractor's name, address, license number, expiration date, class of license, and classifications or specialty services; and
  - i. Statement providing that any modification to the contract, which changes the cost, materials, work to be performed, or estimated completion date, must be in writing and signed by all parties.

FACTS:

The contract used by Lincoln in the transaction failed to contain subsections: f., h., and i. (Exh. C-2)

4. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

5. Negligence and/or incompetence in the practice of contracting.

FACTS:

On September 28, 2004, at the request of the Shooks, David W. Hutchenson ("Hutchenson") of Gaddy Home Inspections conducted an inspection of the subject property. Hutchenson noted deficiencies found at the subject property. (Exh. W-2)

On December 23, 2004, the City of Hampton Codes and Compliance Department conducted an inspection of the subject property and discovered thirty-nine (39) building code violations. (Exh. W-1)

5. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

12. Refusing or failing, upon request, to produce to the board, or any of its agents, any document, book, record, or copy of it in the licensee's possession concerning a transaction covered by this chapter or for which the licensee is required to maintain records.

FACTS:

On October 6, 2004, Investigator Valerie Matney, the Board's agent, sent a written request to Lincoln at the address of record of 64 Bay Front Place, Hampton, Virginia 23664, requesting the name, address and telephone number of all subcontractors and specifically what work was performed by each sub-contractor, all subcontract agreements and/or invoices with a statement of what each subcontractor was paid in total for the project, copies of all checks paid to subcontractors, and each subcontractor's Board for Contractors license number. The Board's agent requested the response and relevant documents be received by October 22, 2004. (Exh. I-1)

As of March 10, 2005, Lincoln refused or failed, upon request, to produce to the Board's agent documents concerning this transaction.

**IN THE  
COMMONWEALTH OF VIRGINIA  
BOARD FOR CONTRACTORS**

Re: B.L. Hall, t/a B.L. Hall Custom Builders

File Number: 2004-04314  
License Number: 2701039420

**SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE**

On April 4, 2005, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to B.L. Hall ("Hall"), t/a Hall Custom Builders to the address of record. The Notice included the Report of Findings, which contained the facts regarding the regulatory and/or statutory issues in this matter. The certified mail was signed for and received.

On May 3, 2005, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Bryan Hall, Respondent; Phillip Delvecchio ("P. Delvecchio"), Witness; Jennifer Kazzie, Staff Member; and Wyatt Walton, Presiding Board Member.

**RECOMMENDATION**

Based upon the evidence and the IFF, the following is recommended regarding the Counts as outlined in the Report of Findings:

Count 1: Board Regulation (Effective January 1, 2003)

The contract used in the transaction failed to contain six of the provisions required by the Board's regulation.

Hall's failure to include subsections c., d., e., f., h. (contractor's license number, expiration date, class of license, and classifications or specialty services), and i. in the contract is a violation of Board Regulation 18 VAC 50-22-260.B.9. During the IFF, Hall acknowledged that the contract used in the transaction failed to contain the requisite provisions required by the Board. Hall provided a revised copy of the contract during the IFF. Therefore, I recommend a monetary penalty of \$250.00 and remedial education be imposed.

The Board's Basic Contracting License class (remedial education) must be successfully completed by a member of Responsible Management within six months of the effective date of the order.

Count 2: Board Regulation (Effective January 1, 2003)

In May 2003, Hall contracted with Jennie Delvecchio ("J. Delvecchio") to construct an addition at the subject property. Between June 2003 and December 2003, Hall performed work at the subject property.

On December 28, 2003, P. Delvecchio fired Hall. Three days later, the building inspector inspected the crawl space and addition constructed by Hall. The building inspector observed that the addition was still sealed from the main house, and the original basement was musty. The building inspector told P. Delvecchio to remove the mold, and advised P. Delvecchio that crawl space must be ventilated and insulated, accesses opened, and dirt removed to increase clearance.

P. Delvecchio testified that due to the delay in returning to the property, the mold developed and caused numerous health problems. P. Delvecchio hired another contractor to remove the mold at the subject property. Hall submitted insurance documents indicating that the homeowners were reimbursed for their medical expenses, caused by the mold.

Hall testified that the building code requires a clearance of 18" in the crawl space. Hall further testified that pictures included within the record show a clearance of 17½" and that it was always his intention to return to the property to level out the floor and ensure that the grading and clearance met code requirements, along with completing the insulation and ventilation of the crawl space. Hall provided a letter dated December 29, 2003, respectfully requesting the completion date be extended, due to circumstances beyond his control.

Because Hall was fired from the job, he was unable to complete the work contracted for. Therefore, I recommend Count 2 of this file be closed with a finding of no violation of 18 VAC 50-22-260.B.5.

By: \_\_\_\_\_  
Wyatt Walton  
Presiding Board Member  
  
Board for Contractors

Date: \_\_\_\_\_

**MONETARY PENALTY TERMS**

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*LICENSE, CERTIFICATE, OR REGISTRATION UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.*

DRAFT

VIRGINIA DEPARTMENT OF PROFESSIONAL  
AND OCCUPATIONAL REGULATION  
COMPLIANCE & INVESTIGATION DIVISION  
3600 WEST BROAD STREET  
RICHMOND, VA 23230-4917

REPORT OF FINDINGS

BOARD: Board for Contractors  
DATE: March 25, 2005 (revised March 31, 2005)

FILE NUMBER: 2004-04314  
RESPONDENT: B. L. Hall, t/a B. L. Hall Custom Builders  
LICENSE NUMBER: 2701039420  
EXPIRATION: November 30, 2005

SUBMITTED BY: Renee H. Popielarz  
APPROVED BY: E. Wayne Mozingo

COMMENTS:

Exhibit C-2 contains the estimate and general specifications while Exhibit R-2 contains the actual signed contract.

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B. L. Hall, t/a B. L. Hall Custom Builders ("Hall"), was at all times material to this matter a licensed Class A contractor in Virginia (No. 2701039420).

Based on the analysis and/or investigation of this matter, there is probable cause to believe the respondent has committed the following violation(s) of the Code of Virginia and/or Board's regulation(s):

BACKGROUND:

On April 20, 2004, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Jennie Lynn DeVecchio ("DeVecchio") regarding Hall. (Exh. C-1)

On May 9, 2003, Hall provided DeVecchio a written estimate, in the amount of \$37,260.00, and general specifications to build an addition, reroof the existing house, and install overhands and metal on the existing house at 18171 Bull Church Road, Ruther Glen, Virginia 22546. (Exh. C-2)

On May 29, 2003, Hall entered into a written contract, in the amount of \$37,260.00, with DelVecchio to construct a 15' x 24' addition with bathroom and closet, reroof the house and wrap the soffit with metal and vinyl at the subject property. (Exh. R-2)

On May 29, 2003, DelVecchio paid Hall \$5,000.00 by check. (Exh. C-3)

On August 1, 2003, Hall obtained building permit number 0007921-2003 to build an addition at the subject property. (Exh. I-1)

On September 2, 2003, DelVecchio paid Hall \$5,000.00 by check. (Exh. C-4)

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1. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

9. Failure of those engaged in residential contracting as defined in this chapter to comply with the terms of a written contract which contains the following minimum requirements:
  - c. A listing of specified materials and work to be performed, which is specifically requested by the consumer;
  - d. A "plain-language" exculpatory clause concerning events beyond the control of the contractor and a statement explaining that delays caused by such events do not constitute abandonment and are not included in calculating time frames for payment or performance;
  - e. A statement of assurance that the contractor will comply with all local requirements for building permits, inspections, and zoning;
  - f. Disclosure of the cancellation rights of the parties;
  - h. Contractor's license number, expiration date, class of license, and classifications or specialty services; and
  - i. Statement providing that any modification to the contract, which changes the cost, materials, work to be performed, or estimated completion date, must be in writing and signed by all parties.

FACTS:

The contract used by Hall in the transaction failed to contain subsections: c., d., e., f., h., and i. (Exh. R-2)

2. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

5. Negligence and/or incompetence in the practice of contracting.

FACTS:

Between June 2003 and December 2003, Hall performed work at the subject property. During the construction, Hall did not ventilate the crawl space and left water in a new tube. (Exh. C-1)

On August 26, 2003, the footing inspection passed. (Exh. I-1)

On September 17, 2003, the foundation inspection passed because it was a conditional crawl space without vents. However, the crawl space constructed by Hall was not deep enough and did not have the right clearance, in violation of the 2000 International Residential Code One and Two Family Dwellings Section R3231-1. Hall told the inspector this would be fixed when the cut through to the existing house was done. (Exh. I-1)

On December 4, 2003, the rough-in plumbing failed because 100 psi was needed. On December 4, 2003, the rough-in electrical, rough-in framing, and mechanical inspections passed; however, the inspector did note, "add blocks between ceiling joist" and "ck crawl at final." On December 9, 2003, the insulation and rough-in plumbing inspections passed. (Exh. I-1)

On December 28, 2003, DelVecchio fired Hall. (Exh. C-1)

On December 31, 2003, George Grampp ("Grampp"), building inspector for Caroline County, inspected the crawl space and addition constructed by Hall at the subject property. (Exh. C-1) Grampp observed that the addition was still sealed off from the main house and the original basement was musty. (Exh. I-1) Grampp told DelVecchio to remove the mold. Grampp also advised DelVecchio that the crawl space must be ventilated and insulated, accesses opened, and dirt removed. (Exh. C-1)

On March 3, 2004, DelVecchio hired Froehling & Robertson Inc. Geotechnical Environmental Materials Engineers Laboratories to test for the type of mold at the subject property. (Exh. C-1)

DelVecchio hired another contractor to remove the mold at the subject property. (Exh. C-1)



**IN THE  
COMMONWEALTH OF VIRGINIA  
BOARD FOR CONTRACTORS**

Re: American Painting Inc.

File Number: 2004-04832  
License Number: 2705046657

**SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE**

On April 4, 2005, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to American Painting Inc. ("API") to the address of record. The Notice included the Report of Findings, which contained the facts regarding the regulatory and/or statutory issues in this matter. The certified mail was signed for and received.

On May 3, 2005, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: George Pappadakis ("Pappadakis"), Responsible Management for API, Respondent; Justo Perez (Perez"), Complainants; Jennifer Kazzie, Staff Member; and Wyatt Walton, Presiding Board Member.

**RECOMMENDATION**

Based upon the evidence and the IFF, the following is recommended regarding the Counts as outlined in the Report of Findings:

Count 1: Board Regulation (Effective January 1, 2003)

In March 2003, API contracted with the Perez to power wash, replace bad wood, and paint the house at the subject property. The contract reflected the name American Painting & Carpentry/Emanuel Pappadakis. The State Corporation Commission's records reveal that API has no registered fictitious names, and the Board's licensing records do not list any other trade name for API. During the IFF, Pappadakis acknowledged a mistake was made and provided an updated contract, which accurately reflects the company name on record with the Board.

API's failure to operate in the name in which the license was issued is a violation of Board Regulation 18 VAC 50-22-230.A. Therefore, I recommend a monetary penalty of \$100.00 and remedial education be imposed.

The Board's Basic Contracting License class (remedial education) must be successfully completed by a member of Responsible Management within six months of the effective date of the order.

Count 2: Board Regulation (Effective January 1, 2003)

The contract used in the transaction failed to contain seven of the provisions required by the Board's regulation. Specifically, subsections a., b., d., e., f., h., and i. were not included in the contract, which is a violation of Board Regulation 18 VAC 50-22-260.B.9 During the IFF, Pappadakis provided a revised copy of his company's contract. Therefore, I recommend a monetary penalty of \$100.00 and remedial education be imposed.

The Board's Basic Contracting License class (remedial education) must be successfully completed by a member of Responsible Management within six months of the effective date of the order.

Count 3: Board Regulation (Effective January 1, 2003)

The contract specified "replace all bad wood", and "2 coats Benjamin Moore" paint. At the time API performed the work, Perez testified that he only saw one can of Benjamin Moore paint and the rest of the paint was in large canisters. After API performed the work, Perez noticed the wood replaced by API was buckling. Perez also noticed the paint was cracking and peeling off in several areas of the house, window frames, front of the house, and eaves. Perez also noticed a many of the siding boards were deteriorated.

Conversely, Pappadakis testified during the IFF that only Benjamin Moore paint was used and that the house has a severe moisture problem. Pappadakis further testified that the house does not have gutters and that he replaced all siding boards that were rotten, in accordance with his contract. Pappadakis also testified that the replaced siding boards were masonite and, coupled with the lack of gutters, the boards continue to rot and the paint continues to crack due to excessive moisture. Pappadakis testified that he has made repeated attempts to resolve Perez's concerns with the work and has replaced numerous, other rotten boards since commencing the contracted work. Pappadakis further testified that he has agreed to return to the property and make additional repairs to the house, including the replacement of additional masonite siding boards.

During the IFF, Perez provided a letter from Robert Quesenberry ("Quesenberry") noting numerous deficiencies during a June 2004 on-site inspection. It is my opinion, however, that since final payment was made on this contract in March 2003, and the on-site inspection conducted by Quesenberry occurred in June 2004, the letter does not accurately attest to the work undertaken by Pappadakis, in its entirety.

I believe Pappadakis continues to make a good faith effort to resolve Perez's concerns with the work. However, I believe Perez's issues with the work are not due to Pappadakis' failure to

complete the work contracted for, rather the moisture problem affecting his house. Therefore, I recommend Count 3 of this file be closed with a finding of no violation of 18 VAC 50-22-260.B.15.

Count 4: Board Regulation (Effective January 1, 2003)

The records for the State Corporation Commission revealed an address for API that is different from API's address of record with the Board. Pappadakis testified that the address on record was a temporary address, used while he was separated from his wife and filing for a divorce. Pappadakis was not aware that his address had been changed with the Board. Pappadakis was provided with a name and address change form and has updated the Board licensing records with his permanent address, which was the previous address used by API. Therefore, I recommend Count 4 of this file be closed with a finding of no violation of 18 VAC 50-22-230.B.

By: \_\_\_\_\_  
Wyatt Walton  
Presiding Board Member

Board for Contractors

Date: \_\_\_\_\_

#### **MONETARY PENALTY TERMS**

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VIRGINIA DEPARTMENT OF PROFESSIONAL  
AND OCCUPATIONAL REGULATION  
COMPLIANCE & INVESTIGATION DIVISION  
3600 WEST BROAD STREET  
RICHMOND, VA 23230-4917

REPORT OF FINDINGS

BOARD: Board for Contractors  
DATE: March 25, 2005 (revised March 31, 2005)

FILE NUMBER: 2004-04832  
RESPONDENT: American Painting Inc.  
LICENSE NUMBER: 2705046657  
EXPIRATION: September 30, 2006

SUBMITTED BY: Renee H. Popielarz  
APPROVED BY: E. Wayne Mozingo

COMMENTS:

Mr. Pappadakis with American Painting Inc. indicated that the second handwritten page with the contract provided by Mr. and Mrs. Perez is not a part of the contract between the two parties. (Exh. I-12)

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American Painting Inc. ("API") was at all times material to this matter a licensed Class B contractor in Virginia (No. 2705046657).

Based on the analysis and/or investigation of this matter, there is probable cause to believe the respondent has committed the following violation(s) of the Code of Virginia and/or Board's regulation(s):

BACKGROUND:

On May 27, 2004, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Daniel Small ("Small"), on behalf of Justo and Helga Perez ("the Perezes"), regarding Emanuel Pappadakis, t/a American Painting and Carpentry. (Exh. C-1)

On March 16, 2003, American Painting & Carpentry / Emanuel Pappadakis entered into a written contract, in the amount of \$8,000.00, with the Perezes to power wash, replace all bad wood, and paint the house at 2104 Castlebridge Road, Midlothian, Virginia 23113. The contract was signed by Emanuel Pappadakis on behalf of American Painting & Carpentry. (Exh. C-2)

On March 18, 2003, the Perezes paid Emanuel Pappadakis \$2,500.00 by check. On March 25, 2003, the Perezes paid Emanuel Pappadakis \$2,500.00 by check. On March 26, 2003, the Perezes paid Emanuel Pappadakis \$3,275.00 by check. (Exh. C-3)

On September 17, 1998, API was issued Class B contractor's license number 2705046657 as a corporation. George Emanuel Pappadakis, individual tracking number 2706077946, is the Qualified Individual and Responsible Management for license number 2705046657. (Exh. I-11)

\*\*\*\*\*

1. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-230. Change of name or address.

- A. A licensee must operate under the name in which the license is issued. Any name change shall be reported in writing to the board within 30 days of the change. The board shall not be responsible for the licensee's failure to receive notices or correspondence due to the licensee's not having reported a change of name.

FACTS:

API does not have any fictitious names registered with the State Corporation Commission ("SCC"). (Exh. I-13)

API failed to operate under the name in which the license is issued.

2. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

- B. The following are prohibited acts:

9. Failure of those engaged in residential contracting as defined in this chapter to comply with the terms of a written contract which contains the following minimum requirements:
- a. When work is to begin and the estimated completion date;
  - b. A statement of the total cost of the contract and the amounts and schedule for progress payments including a specific statement on the amount of the down payment;
  - d. A "plain-language" exculpatory clause concerning events beyond the control of the contractor and a statement explaining that delays caused by such events do not constitute abandonment and are not included in calculating time frames for payment or performance;

- e. A statement of assurance that the contractor will comply with all local requirements for building permits, inspections, and zoning;
- f. Disclosure of the cancellation rights of the parties;
- h. Contractor's name, address, license number, expiration date, class of license, and classifications or specialty services; and
- i. Statement providing that any modification to the contract, which changes the cost, materials, work to be performed, or estimated completion date, must be in writing and signed by all parties.

FACTS:

The contract used by API in the transaction failed to contain subsections: a., b., d., e., f., h., and i. (Exh. C-2)

3. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

- 15. The intentional and unjustified failure to complete work contracted for and/or to comply with the terms in the contract.

FACTS:

The contract specified, "replace all bad wood" and "2 coats Benjamin Moore" paint. (Exh. C-2)

At the time API performed the work, Helga Perez only saw one can of Benjamin Moore paint and the rest of the paint was in large canisters. (Exh. I-1)

After API performed the work, the Perezes noticed the wood replaced by API was buckling. (Exh. I-1)

Several months prior to April 5, 2004, the Perezes noticed that the painting was cracking and peeling off in several areas of the house, window frames, front of the house, and eaves. The Perezes also noticed a couple of siding boards were deteriorated. (Exh. C-1)

API failed to complete the work contracted for and to comply with the terms of the contract.

4. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-230. Change of name or address.

- B. Any change of address shall be reported in writing to the board within 30 days of the change. The board shall not be responsible for the licensee's failure to receive notices or correspondence due to the licensee's not having reported a change of address.

**FACTS:**

The SCC records indicate API's address is 2801 Jolly lane, Chester, Virginia 23831. (Exh. I-13)

The licensing records indicate the address of record for API is 2522 Eliham Avenue, Richmond, Virginia 23237. (Exh. I-11)

API failed to report, in writing, to the board within thirty (30) days of a change of its address.

DRAFT

**IN THE  
COMMONWEALTH OF VIRGINIA  
BOARD FOR CONTRACTORS**

Re: Turcotte Project Management Services LLC

File Number: 2005-00296  
License Number: 2705072430

**SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE**

On February 18, 2005, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Turcotte Project Management Services LLC ("Turcotte") to the address of record. The Notice included the Report of Findings, which contained the facts regarding the regulatory and/or statutory issues in this matter. The Notice was also mailed, via certified mail, to Turcotte at 3319 Main Street, Exmore, Virginia 23350. The certified mailings to both addresses were each signed for and received.

On March 28, 2005, Turcotte requested a continuance of the Informal Fact-Finding Conference ("IFF"), which was granted. On March 28, 2005, a letter to reschedule the IFF was mailed, via certified mail, to Turcotte to the address of record, and to the alternate address. The certified mail to the address of record was signed for and received. The certified mail to the alternate address was returned by the United States Postal Service, and marked as "No Mail Receptacle."

On May 3, 2005, an IFF was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Joyce Kenney ("Kenney"), Complainant; Jennifer Kazzie, Staff Member; and Wyatt Walton, Presiding Board Member. Neither Turcotte, Respondent, nor anyone on its behalf appeared at the IFF.

**RECOMMENDATION**

Based upon the evidence and the IFF, the following is recommended regarding the Counts as outlined in the Report of Findings:

In June 2003, Turcotte provided Kenney with a verbal quote to perform work at the subject property. Kenney paid Turcotte, and Turcotte performed work. In July 2003, Kenney contracted with Turcotte to perform additional work at the subject property. In January 2004, Kenney contracted with Turcotte to have additional work performed at the subject property.



Count 1: Board Regulation (Effective January 1, 2003)

Turcotte failed to use a written contract prior to beginning work or accepting payments in June 2003.

During the IFF, Kenney stated Turcotte was hired to perform roof work at the subject property.

Turcotte's failure to use a legible written contract, signed by both parties, prior to beginning work or accepting payments is a violation of Board Regulation 18 VAC 50-22-260.B.8. Therefore, I recommend a monetary penalty of \$300.00 and remedial education be imposed.

The Board's Basic Contracting License class (remedial education) must be successfully completed by a member of Responsible Management within six months of the effective date of the order.

Count 2: Board Regulation (Effective January 1, 2003)

The original contract amount for work at the subject property was \$3,900.00. From June 2003 through June 2004, Turcotte performed additional work, and agreed to additional contracts with Kenney, which increased the overall value of the project to \$49,862.35. Turcotte only holds a Class C contractor's license. Turcotte exceeded the limitations of its Class C license.

Turcotte's action of practicing in a class of license for which it is not licensed is a violation of Board Regulation 18 VAC 50-22-260.B.27. Therefore, I recommend a monetary penalty of \$500.00 be imposed.

Count 3: Board Regulation (Effective January 1, 2003)

The contracts used by Turcotte in the transaction failed to contain six of the provisions required by the Board's regulation.

Turcotte's failure to include subsections a., d., e., f., h. (contractor's license expiration date, class of license, and classifications or specialty services), and i. in the contracts is a violation of Board Regulation 18 VAC 50-22-260.B.9. Therefore, I recommend a monetary penalty of \$300.00 and remedial education be imposed.

The Board's Basic Contracting License class (remedial education) must be successfully completed by a member of Responsible Management within six months of the effective date of the order.

Count 4: Board Regulation (Effective January 1, 2003)

Turcotte failed to obtain the required building permit to perform work at the subject property, in violation of the Uniform Statewide Building Code. Turcotte informed the Board's agent that Kenney's husband was responsible for getting permits.

During the IFF, Kenney stated she assumed the contractor was getting the permits. Based on the record, Turcotte did not obtain or ensure a required permit was obtained prior to performing work at the subject property.

Turcotte's action constitutes misconduct in the practice of contracting and is a violation of Board Regulation 18 VAC 50-22-260.B.6. Therefore, I recommend a monetary penalty of \$500.00 be imposed.

Count 5: Board Regulation (Effective January 1, 2003)

During the IFF, Kenney stated Turcotte repeatedly presented her with invoices for additional work to be performed. Based on the record, the invoices provided to Kenney (Exhibits C-4 through C-8) were not change orders signed by both parties.

Turcotte's failure to obtain signed, written change orders modifying the original contract is a violation of Board Regulation 18 VAC 50-22-260.B.31. Therefore, I recommend a monetary penalty of \$500.00 and remedial education be imposed.

The Board's Basic Contracting License class (remedial education) must be successfully completed by a member of Responsible Management within six months of the effective date of the order.

Count 6: Board Regulation (Effective January 1, 2003)

During the IFF, Turcotte and Kenney met in May 2004 regarding the status the work. Turcotte told Kenney he would complete the work. However, between May 2004 and January 2005, Turcotte did not perform any additional work at the subject property. Kenney hired another contractor to complete the work.

Turcotte's failure to complete work is a violation of Board Regulation 18 VAC 50-22-260.B.15. Therefore, I recommend a monetary penalty of \$1,500.00 and license revocation be imposed.

Count 7: Board Regulation (Effective January 1, 2003)

During the IFF, Kenney paid Turcotte a total of \$42,742.35 towards the revised contracted amount. Kenney permanent home is 150 miles from the subject property. Kenney is not able to drive because of her medical condition. Kenney relied upon Turcotte's representation that work was progressing and continued to make payments without seeing the progress at the subject property.

Kenney stated she hired another contractor at a cost of \$26,000.00.

Turcotte's retention of funds received for work not performed, or performed only in part, is a violation of Board Regulation 18 VAC 50-22-260.B.16. Therefore, I recommend a monetary penalty of \$1,500.00 and license revocation be imposed.

Count 8: Board Regulation (Effective January 1, 2003)

In August 2004, the Board's agent requested Turcotte provide a written response and supporting documents to the complaint filed with the Board. In November the Board's agent contacted Turcotte by telephone, Turcotte told the Board's agent he would provide a written response to the complaint by December 3, 2004. Turcotte failed to provide the Board's agent with the written response and documents as requested.

Turcotte's failure to respond to the investigator is a violation of Board Regulation 18 VAC 50-22-260.B.13. Therefore, I recommend a monetary penalty of \$500.00 be imposed.

By: \_\_\_\_\_  
Wyatt Walton  
Presiding Board Member

Board for Contractors

Date: \_\_\_\_\_

#### **MONETARY PENALTY TERMS**

*THE TOTAL MONETARY PENALTY RECOMMENDED HEREIN SHALL BE PAID WITHIN SIXTY (60) DAYS FROM THE DATE OF ENTRY OF THE FINAL ORDER IN THIS MATTER. FAILURE TO PAY THE TOTAL MONETARY PENALTY ASSESSED WITHIN SIXTY (60) DAYS OF THE DATE OF ENTRY OF SAID FINAL ORDER WILL RESULT IN THE AUTOMATIC SUSPENSION OF THE LICENSE, CERTIFICATE, OR REGISTRATION UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.*

VIRGINIA DEPARTMENT OF PROFESSIONAL  
AND OCCUPATIONAL REGULATION  
COMPLIANCE & INVESTIGATION DIVISION  
3600 WEST BROAD STREET  
RICHMOND, VA 23230-4917

REPORT OF FINDINGS

BOARD: Board for Contractors  
DATE: February 1, 2005 (revised February 8, 2005)

FILE NUMBER: 2005-00296  
RESPONDENT: Turcotte Project Management Services LLC  
LICENSE NUMBER: 2705072430  
EXPIRATION: November 30, 2006

SUBMITTED BY: Valerie J. Matney  
APPROVED BY: David C. Dorner

COMMENTS:

The complainant's husband, William Kenney, initially handled the contracts with the respondent until his death in November 2003.

\*\*\*\*\*

Turcotte Project Management Services LLC ("Turcotte") was at all times material to this matter a licensed Class C contractor in Virginia (No. 2705072430).

Based on the analysis and/or investigation of this matter, there is probable cause to believe the respondent has committed the following violation(s) of the Code of Virginia and/or Board's regulation(s):

BACKGROUND:

On July 9, 2004, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Joyce Gillen Kenney ("Kenney") regarding Turcotte Project Management Services Inc. (Exh. C-1)

On June 19, 2003, Turcotte provided Kenney with a verbal quote, in the amount of \$3,900.00, to perform work at 28109 Alicato Road, Parksley, Virginia 23421. (Exh. C-2)

On June 19, 2003, Kenney paid Turcotte \$ 2,000.00 by check number 1484. (Exh. C-14 and C-15)

On June 30, 2003, Turcotte provided Kenney with an invoice for extra work performed at the subject property. The invoice indicated a balance of \$4,100.00, which included the remaining balance of \$1,900.00 from the original quote plus \$2,200.00 for the additional work. (Exh. C-2)

On June 30, 2003, Kenney paid Turcotte \$4,100.00 by check number 1523. (Exh. C-14 and C-15)

On July 11, 2003, Turcotte provided Kenney with a written proposal, in the amount of \$9,200.00, to remove all existing siding, stucco, and exterior stucco wire, remove all exterior windows and re-sheath all exterior walls, reinstall windows and replace rotted windows, replace three exterior doors, prepare for new siding, and install siding on exterior walls at the subject property. (Exh. C-3)

On July 18, 2003, Kenney paid Turcotte \$3,200.00 by check number 1533. On July 21, 2003, Kenney paid Turcotte \$2,500.00 by check number 1535. Exh. C-14 and C-15)

On July 23, 2003, Turcotte entered into a written contract, in the amount of \$11,800.00, with Kenney to remove all existing siding, stucco, and stucco wire, clean up all framing and make repairs to framing where required, install mudsill where required with pressure treated wood, remove all exterior doors and windows and resheath all framing with plywood and Tyvek moisture wrap, supply and install 11 new vinyl double hung new construction windows, and 3 new metal exterior doors with new brass locksets, prepare all exterior and make ready for future siding and soffit application, and remove all construction debris for proper disposal at the subject property. The contract indicated "Future siding application quote will be \$3,700.00." (Exh. C-3)

On August 15, 2003, Turcotte provided Kenney with an invoice for extra work performed at the subject property. The invoice indicated a balance of \$6,350.00, which included the remaining balance of \$6,100.00 from the July 23, 2003, contract plus \$250.00 for the additional work. (Exh. C-4)

On August 15, 2003, Kenney paid Turcotte \$6,350.00 by check number 1557. (Exh. C-14 and C-15) On September 5, 2003, Kenney paid Turcotte \$1,850.00 by check number 1595, as deposit towards the \$3,700.00 quote for siding. (Exh. C-5, C-14, and C-15) On September 10, 2003, Kenney paid Turcotte \$1,850.00 by check number 102. (Exh. C-14 and C-15)

On October 17, 2003, Turcotte provided Kenney with an invoice, in the amount of \$520.00, for the removal and clean up of the interior of home, the disposal fee at the landfill, and trailer rent at the subject property. (Exh. C-6)

On October 25, 2003, Kenney paid Turcotte \$520.00 by check number 1647. (Exh. C-14 and C-15)

On November 13, 2003, Turcotte provided Kenney with an invoice, in the amount of \$2,082.00, to resheath the entire floor area with 5/8 inch plywood for 694 square feet at the subject property. (Exh. C-7)

On November 14, 2003, Kenney paid Turcotte \$2,082.00 by check number 1662. (Exh. C-14 and C-15)

On November 19, 2003, Turcotte provided Kenney with a verbal quote, in the amount of \$4,000.00, for insulation. (Exh. C-8)

On November 27, 2003, Kenney paid Turcotte \$2,000.00 by check number 1688. (Exh. C-14 and C-15)

On December 12, 2003, Turcotte provided Kenney with an invoice for extra work performed at the subject property. The invoice indicated a balance of \$4,640.35, which included \$1,670.00 for the additional work plus \$4,000.00 for insulation minus \$2,000.00 plus \$970.35 for an electrical invoice. (Exh. C-8)

On December 19, 2003, Kenney paid Turcotte \$4,640.35 by check number 1706. (Exh. C-14 and C-15)

On December 30, 2003, Turcotte entered into a verbal agreement, in the amount of \$5,290.00, with Kenney to perform additional work at the subject property. (Exh. C-9)

On January 2, 2004, Turcotte entered into a written contract, in the amount of \$5,290.00, with Kenney to remove all existing interior wallboard and redo entire interior with new drywall and tape all seams and corners with drywall tape and plaster; to replace rear patio door with a custom made one, 6 feet wide and 78 inches high, vinyl sliding patio door, remove old and install new. The contract was signed by Turcotte, but not Kenney. On the signature line for acceptance of the proposal, the contract indicated, "Accepted by phone conversation on 12/30/03." (Exh. C-9)

On January 2, 2004, Kenney paid Turcotte \$3,000.00 by check number 105. On January 23, 2004, Kenney paid Turcotte \$2,290.00 by check number 107. (Exh. C-14 and C-15)

On February 13, 2004, Turcotte provided Kenney with a written proposal, in the amount of \$10,800.00, for additional plumbing and painting work to be performed at the subject property. (Exh. C-11)

On March 3, 2004, Turcotte provided Kenney with an invoice, in the amount of \$3,480.00, which included \$3,150.00 as a 50% deposit toward a plumbing quote, \$180.00 for labor for clearing out garbage, and \$150.00 as a disposal fee for all garbage. (Exh. C-10)

On March 3, 2004, Kenney paid Turcotte \$3,480.00 by check number 110. On March 26, 2004, Kenney paid Turcotte \$2,000.00 by check number 115. On April 24, 2004, Kenney paid Turcotte \$320.00 by check number 116. On May 8, 2004, Kenney paid Turcotte \$560.00 by check number 1907. (Exh. C-14 and C-15)



On June 7, 2004, Turcotte provided Kenney with an invoice, in the amount of \$2,680.00, for extra work performed at the subject property. (Exh. C-12)

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1. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

8. Failure of all those who engage in residential contracting, excluding subcontractors to the contracting parties and those who engage in routine maintenance or service contracts, to make use of a legible written contract clearly specifying the terms and conditions of the work to be performed. For the purposes of this chapter, residential contracting means construction, removal, repair, or improvements to single-family or multiple-family residential buildings, including accessory-use structures as defined in § 54.1-1100 of the Code of Virginia. Prior to commencement of work or acceptance of payments, the contract shall be signed by both the consumer and the licensee or his agent.

FACTS:

Turcotte failed to use a legible written contract, signed by both parties, prior to the commencement of work or acceptance of payments.

2. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

27. Practicing in a classification, specialty service, or class of license for which the contractor is not licensed.

FACTS:

On November 26, 2002, Turcotte was issued Class C contractor's license number 2705072430. (Exh. I-1)

Section 54.1-1100 of the Code of Virginia states "Class C contractors' perform or manage construction, removal, repair, or improvements when (i) the total value referred to in a single contract or project is over \$1,000 but less than \$7,500 . . ."

Turcotte practiced in a class of license for which it is not licensed.

3. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

9. Failure of those engaged in residential contracting as defined in this chapter to comply with the terms of a written contract which contains the following minimum requirements:
  - a. When work is to begin and the estimated completion date;
  - d. A "plain-language" exculpatory clause concerning events beyond the control of the contractor and a statement explaining that delays caused by such events do not constitute abandonment and are not included in calculating time frames for payment or performance;
  - e. A statement of assurance that the contractor will comply with all local requirements for building permits, inspections, and zoning;
  - f. Disclosure of the cancellation rights of the parties;
  - h. Contractor's expiration date, class of license, and classifications or specialty services; and
  - i. Statement providing that any modification to the contract, which changes the cost, materials, work to be performed, or estimated completion date, must be in writing and signed by all parties.

FACTS:

The contracts used by Turcotte in the transaction failed to contain subsections: a., d., e., f., h., and i. (Exh. C-3 and C-9)

4. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:



6. Misconduct in the practice of contracting.

FACTS:

As of August 31, 2004, Turcotte failed to obtain a required building permit, in violation of Section 109 of the Virginia Uniform Statewide Building Code. (Exh. I-2 and I-6)

On November 17, 2004, Turcotte stated William Kenney was responsible for getting the permits. (Exh. I-4)

5. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

31. Failure to obtain written change orders, which are signed by both the consumer and the licensee or his agent, to an already existing contract.

FACTS:

Turcotte failed to obtain written change orders, signed by both parties, for modifications to the original contract.

6. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

15. The intentional and unjustified failure to complete work contracted for and/or to comply with the terms in the contract.

FACTS:

Turcotte and Kenney met to discuss payments and incomplete work. During the meeting, Turcotte admitted the incomplete work was paid for by Kenney. Turcotte requested Kenney pay \$2,700.00 before performing any additional work. Kenney requested Turcotte go back to the subject property to finish the work that was paid for, but Turcotte refused. (Exh. C-1)

Turcotte failed to complete the following work:

- siding application to the garage.
- adjust, repair and replace interior wood framing for insulation and drywall; insulation.
- redo entire interior with new drywall and tape all seams and corners with drywall tape and plaster; to replace rear patio door with a custom made one, 6 feet wide and 78 inches high, vinyl sliding patio door, remove old and install new.

- re-do the drainage lines under the house that need to be corrected, test all water feed lines under the home and check for leaks; furnish and install all fixtures, faucets and vanity; furnish and install one shower across from present bathroom area.
- paint work to include: furnish all paint supplies and paint; do all walls with one coat of primer and two coats of flat latex, all trim on doors, windows and baseboards to be semi-gloss latex; paint both sides of 3 exterior doors.
- clean up and burn dead tree debris. (Exh. C-1, C-13, and I-5)

7. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

16. The retention or misapplication of funds paid, for which work is either not performed or performed only in part.

FACTS:

In addition to the facts outlined in Count 6:

As of June 29, 2004, Turcotte retained funds for work not performed or performed only in part.

8. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

13. Failing to respond to an investigator or providing false, misleading or incomplete information to an investigator seeking information in the investigation of a complaint filed with the board against the contractor.

FACTS:

On August 27, 2004, Investigator Valerie Matney, the Board's agent, made a written request to Turcotte at the address of record of 12199 Tower Way, P.O. Box 764, Exmore, Virginia 23350-0764, requesting a written response and supporting documents to the complaint filed with the

Board. The Board's agent requested the response be received by September 15, 2004. (Exh. I-3)

On August 21, 2004, the Board's agent received a telephone message from Turcotte, and returned the call by leaving a message on Turcotte's voice mail. The Board's agent did not receive a return call from Turcotte. (Exh. I-4)

On November 17, 2004, the Board's agent called Turcotte. Turcotte told the Board's agent that he would provide a written response by December 3, 2004. (Exh. I-4)

As of February 1, 2005, Turcotte failed to respond to the investigator seeking information in the investigation of a complaint filed with the board.

**IN THE  
COMMONWEALTH OF VIRGINIA  
BOARD FOR CONTRACTORS**

Re: Timothy D. Berry, Jr., t/a Insideout Construction

File Number: 2005-01765  
License Number: 2705074131

**SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE**

On April 4, 2005, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Timothy D. Berry, Jr., t/a Insideout Construction ("Insideout") to the address of record. The Notice included the Report of Findings, which contained the facts regarding the regulatory and/or statutory issues in this matter. The certified mail was returned by the United States Postal Service, and marked as "Insufficient Address, Unable to Forward." The Notice was also mailed, via certified mail, to Insideout at 7670 Nine Mile Road, Lesage, West Virginia 25537. The certified mail to the second address was signed for and received.

On May 3, 2005, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Gabriele Johnson ("Johnson"), Complainant; Jennifer Kazzie, Staff Member; and Wyatt Walton, Presiding Board Member. Neither Timothy Berry, Respondent, nor anyone on his behalf appeared at the IFF.

**RECOMMENDATION**

Based upon the evidence and the IFF, the following is recommended regarding the Counts as outlined in the Report of Findings:

In June 2004, Insideout contracted with Johnson to build a screened enclosure at the subject property. In September 2004, Insideout commenced work at the subject property.

Count 1: Board Regulation (Effective January 1, 2003)

The contract price was \$8,160.00. Insideout only holds a Class C contractor's license. Insideout's action of practicing in a class of license for which it is not licensed is a violation of Board Regulation 18 VAC 50-22-260.B.27. Therefore, I recommend a monetary penalty of \$500.00 be imposed.

Count 2: Board Regulation (Effective January 1, 2003)

The contract used in the transaction failed to contain five of the provisions required by the Board's regulation.

Insideout's failure to include subsections d., e., f., h. (contractor's license number, expiration date, class of license, and classifications or specialty services), and i. in the contract is a violation of Board Regulation 18 VAC 50-22-260.B.9. Therefore, I recommend a monetary penalty of \$300.00 and remedial education be imposed.

The Board's Basic Contracting License class (remedial education) must be successfully completed by a member of Responsible Management within six months of the effective date of the order.

Count 3: Board Regulation (Effective January 1, 2003)

The contract specified, "Permit through county." Based on the record, work commenced on September 20, 2004.

During the IFF, Johnson stated she contacted Berry on Sunday, September 26, 2004, regarding the permit because she did not see one on site. Johnson asked Berry to provide the permit on Monday. Based on the record, Berry started the application process on September 28, 2004. Johnson stated Berry left a message for her on September 30, 2004, that a variance was needed to obtain the permit. However, Berry never completed the permit application process.

Insideout's action constitutes misconduct in the practice of contracting and is a violation of Board Regulation 18 VAC 50-22-260.B.6. Therefore, I recommend a monetary penalty of \$300.00 be imposed.

Count 4: Board Regulation (Effective January 1, 2003)

During the IFF, Johnson stated Insideout performed work for a week; however, never returned to the property after September 30, 2004. Johnson attempted to locate Berry at his home address, but Berry was not at the address and was told he had left the area.

Based on the record, in October 2004, Johnson sent Insideout a letter regarding the status of the permit, and inquiring when Insideout would resume work. In November 2004, Johnson's attorney informed Insideout that it was terminating the contract because Insideout abandoned the job. Insideout responded to Johnson's attorney by stating that during October 2004, Berry was unable to be reached due to family concerns. Insideout also responded that it no longer wanted the project.

Insideout's failure to complete work is a violation of Board Regulation 18 VAC 50-22-260.B.15. Therefore, I recommend a monetary penalty of \$1,000.00 and license revocation be imposed.

Count 5: Board Regulation (Effective January 1, 2003)

Based on the record, Johnson paid Insideout \$4,080.00 towards the contract amount of \$8,160.00. In November 2004, Johnson's attorney requested Insideout return money received for work not performed. Insideout responded to Johnson's attorney by stating that Insideout did not take any money from Johnson, and that the enclosure was more than half finished.

During the IFF, Johnson stated Insideout delivered the materials but only worked for one week. Johnson hired another contractor at a cost of \$9,240.00 to build the structure Insideout was contracted for.

Insideout's retention of funds for work not performed or performed in part is a violation of Board Regulation 18 VAC 50-22-260.B.16. Therefore, I recommend a monetary penalty of \$1,500.00 and license revocation be imposed.

Count 6: Board Regulation (Effective January 1, 2003)

In November 2004, the Board's agent requested Insideout provide a written response and supporting documents to the complaint filed with the Board. The Board's agent's request was sent by certified mail. The certified mail was returned to the Board's agent, and was marked with a new address for Insideout. The Board's agent's request was sent, by certified mail, to Insideout to a new address. The certified mail was signed for and received. Insideout failed to inform the Board of its new address.

Insideout's failure to inform the Board, in writing, of a change of address within thirty (30) days of the change is a violation of Board Regulation 18 VAC 50-22-230.B. Therefore, I recommend a monetary penalty of \$500.00 be imposed.

By: \_\_\_\_\_  
Wyatt Walton  
Presiding Board Member

Board for Contractors

Date: \_\_\_\_\_

**MONETARY PENALTY TERMS**

*THE TOTAL MONETARY PENALTY RECOMMENDED HEREIN SHALL BE PAID WITHIN SIXTY (60) DAYS FROM THE DATE OF ENTRY OF THE FINAL ORDER IN THIS MATTER. FAILURE TO PAY THE TOTAL MONETARY PENALTY ASSESSED WITHIN SIXTY (60) DAYS OF THE DATE OF ENTRY OF SAID FINAL ORDER WILL RESULT IN THE AUTOMATIC SUSPENSION OF THE*

*LICENSE, CERTIFICATE, OR REGISTRATION UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.*

DRAFT

VIRGINIA DEPARTMENT OF PROFESSIONAL  
AND OCCUPATIONAL REGULATION  
COMPLIANCE & INVESTIGATION DIVISION  
3600 WEST BROAD STREET  
RICHMOND, VA 23230-4917

REPORT OF FINDINGS

BOARD: Board For Contractors  
DATE: March 15, 2005 (revised March 31, 2005)

FILE NUMBER: 2005-01765  
RESPONDENT: Timothy D Berry Jr., t/a Insideout Construction  
LICENSE NUMBER: 2705074131  
EXPIRATION: February 28, 2005

SUBMITTED BY: Lethia Jones, Investigator  
APPROVED BY: Linda Boswell

COMMENTS:

None.

\*\*\*\*\*

Timothy D Berry Jr., t/a Insideout Construction ("Insideout Construction"), was at all times material to this matter a licensed Class C contractor in Virginia (No. 2705074131).

Based on the analysis and/or investigation of this matter, there is probable cause to believe the respondent has committed the following violation(s) of the Code of Virginia and/or Board's regulation(s):

BACKGROUND:

On October 20, 2004, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Gabriele Johnson ("Johnson") regarding Insideout Construction. (Exh. C-1)

On June 27, 2004, Insideout Construction entered into a written contract, in the amount of \$8,160.00, with Johnson to build a 11' x 12' screened enclosure at 8472 Catia Lane Springfield, Virginia 22153. (Exh. C-2)

On September 20, 2004, Insideout Construction commenced work. (Exh. C-1)

On February 19, 2003, Insideout Construction was issued Class C contractor's license number 2705074131 as a sole proprietorship. (Exh. I-4)



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1. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

27. Practicing in a classification, specialty service, or class of license for which the contractor is not licensed.

FACTS:

Section 54.1-1100 of the Code of Virginia states "Class C contractors' perform or manage construction, removal, repair, or improvements when (i) the total value referred to in a single contract or project is over \$1,000 but less than \$7,500 . . ."

Insideout Construction practiced in a class of license for which it is not licensed.

2. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

9. Failure of those engaged in residential contracting as defined in this chapter to comply with the terms of a written contract which contains the following minimum requirements:
- d. A "plain-language" exculpatory clause concerning events beyond the control of the contractor and a statement explaining that delays caused by such events do not constitute abandonment and are not included in calculating time frames for payment or performance;
  - e. A statement of assurance that the contractor will comply with all local requirements for building permits, inspections, and zoning;
  - f. Disclosure of the cancellation rights of the parties;
  - h. Contractor's name, address, license number, expiration date, class of license, and classifications or specialty services; and
  - i. Statement providing that any modification to the contract, which changes the cost, materials, work to be performed, or estimated completion date, must be in writing and signed by all parties.

FACTS:

The contract used by Insideout Construction in the transaction failed to contain subsections: d., e., f., h., and i. (Exh. C-2)

3. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

6. Misconduct in the practice of contracting.

FACTS:

The contract specified, "Permit through county." (Exh. C-2)

On September 28, 2004, Tim Berry of Insideout Construction applied for a permit to perform work at the subject property. (Exh. R-1 and I-3) Insideout Construction was told a variance was needed. (Exh. R-1)

On September 30, 2004, Insideout Construction left a message for Johnson that a variance was needed. (Exh. C-1)

As of November 22, 2004, Insideout Construction failed to obtain a required building permit, in violation of Section 111.0 of the Uniform Statewide Building Code. (Exh. I-3)

4. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

15. The intentional and unjustified failure to complete work contracted for and/or to comply with the terms in the contract.

FACTS:

In a letter dated August 25, 2004, Johnson was advised that the Architectural Review Board of the Forest at South Run Homeowners Association approved her application for a screened enclosure. (Exh. C-2a)

The last time Insideout Construction performed work at the subject property was September 2004. (Exh. C-1)

On October 12, 2004, Johnson sent Insideout Construction a letter regarding the status of the permit and inquiring when Insideout Construction would continue working on the porch. (Exh. C-4)

On November 4, 2004, Howard Birmiel ("Birmiel"), attorney representing Johnson, notified Insideout Construction that Johnson was terminating the contractor because Insideout Construction abandoned the job. (Exh. C-5)

On November 5, 2004, Steadfast Construction Inc. provided Johnson with a written estimate, in the amount of \$8,316.00, to finish the screen porch at the subject property. (Exh. C-5a)

In a letter sent to Birmiel in November 2004 or December 2004, an individual responding for Timothy D. Berry Jr. and Insideout Construction stated, "In October However, Tims grandmother fell ill, and his father had a massive heartack, with all the traveling he was not convenient to reach. Insideout received a letter from Mrs. Johnson early in November but before he could respond he recd this letter from you . . ." The individual also stated, "So at this time, he no longer wants the project . . ." (Exh. R-1)

Insideout Construction failed to comply with the terms of the contract.

5. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

16. The retention or misapplication of funds paid, for which work is either not performed or performed only in part.

FACTS:

In addition to the facts outlined in Count 4:

On September 7, 2004, Johnson paid Insideout Construction \$4,080.00 by check. (Exh. C-3)

On November 4, 2004, Birmiel requested Insideout Construction return money received for work not performed. (Exh. C-5)

In a letter sent to Birmiel in November 2004 or December 2004, an individual responding for Timothy D. Berry Jr. and Insideout Construction stated, "Insideout did not take any money from Mrs. Johnson that was not used in labor or materials. The enclosure is more than half done and materials other than shingles and gutters have been paid for and are laying on the property waiting to be completed." (Exh. R-1)

6. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-230. Change of name or address.

- B. Any change of address shall be reported in writing to the board within 30 days of the change. The board shall not be responsible for the licensee's failure to receive notices or correspondence due to the licensee's not having reported a change of address.

FACTS:

On November 15, 2004, Investigator Lethia Jones, the Board's agent made a written request, via certified mail, to Insideout Construction at the address of record of 13721 Jeff Davis Highway #63 Woodbridge, VA 22191, requesting a written response and supporting documentation to the complaint filed with the Board. (Exh. I-1)

The certified letter was returned to the Board's agent by the United States Postal Service ("USPS") with a label indicating Insideout Construction moved to 7670 Nine Mile Road Lesage, WV 25537. (Exh. I-1)

On January 20, 2005, the Board's agent made a written request, via certified mail, to Insideout Construction at the address of 7670 Nine Mile Road, Lesage, WV 25537, requesting a written response and supporting documentation to the complaint filed with the Board. (Exh I-2)

On January 25, 2005, Rexann Berry signed for the certified letter. (Exh. I-2)

In a letter sent to Birmiel in November 2004 or December 2004, an individual responding for Timothy D. Berry Jr. and Insideout Construction stated, "with all Tim's personal issues he has closed the company and moved. I have no permanent address for him and talk infrequently, but still recving his mail at 13271 Jefferson Davis Hwy 63 Woodbridge, VA 22191." (Exh. R-1)

Insideout Construction failed to report, in writing, to the Board within thirty (30) days of a change of address.